

Application Serial No. 10/560,879
Amendment dated June 26, 2008
Reply to Office Action mailed May 1, 2008
Docket: 2909 US (203-3757 PCT US)

REMARKS/ARGUMENTS

The present application has been reviewed in light of the Office Action dated September 20, 2007. Claims 1-17, 19-22, and 25-32 are currently pending. By the present amendment, claims 1, 3, 4, 15, 22, and 25 have been amended. Applicant respectfully submits that these amendments add no new matter, are fully supported by the specification and are allowable over the prior art of record. In light of these amendments and the remarks that follow, early and favorable reconsideration and allowance of this application is respectfully requested.

Claims 1-14 were objected to as containing several informalities. Applicant has amended claim 1 in a manner that is believed to overcome the objection to this claim. Accordingly, in view of the amendment to claim 1, Applicant respectfully submits that the objection to claims 1-14 has been overcome.

In the Office Action, claims 25-32 were rejected under 35 U.S.C. §112, second paragraph, as having an insufficient antecedent basis. Applicant has amended claim 25 to provide the necessary antecedent basis. Applicant now believes that claims 25-32 as amended herein overcome the rejection under 35 U.S.C. §112, second paragraph.

Claims 1, 3-9, 12, and 13 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application No. 2003/0158555 to Sanders et al. (Sanders). It is respectfully submitted that independent claim 1, as amended, is allowable over Sanders because Sanders fails to disclose or teach each and every feature of independent claim 1.

Claim 1 relates to an absorbable screw including, *inter alia*, a “head portion having a driver receiving structure formed in an outer radial side surface of the outer diameter.” See FIGS. 1 and 4, below.

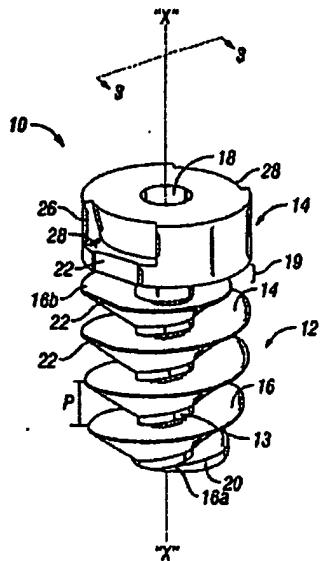


FIG. 1

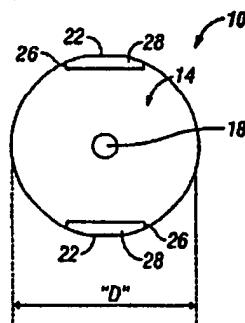
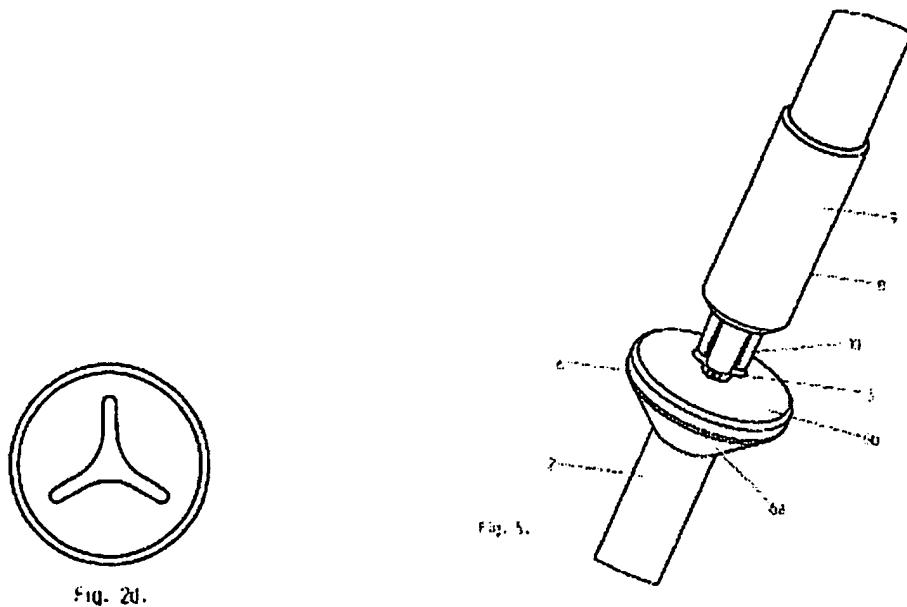


FIG. 4

In contrast, Sanders discloses an absorbable screw fastener having a driver receiving structure in the proximal surface of the screw head. The Office Action states, “Figure 2d, an alternate embodiment, shows a driver receiving structure formed in an outer radial surface thereof.” However, Sanders discloses that, “FIGS. 2a-2d show top views of the head of various embodiments of screws of the present invention,” (pg 4, par. 90). Further, “FIG. 2d shows a three-armed recess in which the lobes are elongated and have rounded ends,” (pg 5, par. 99, lns. 11-12). “FIG. 5 shows embodiments of a surgical screw and an inserter instrument of the present invention in contact with each other,” (pg 5, par. 104, lns. 1-3). FIG 5 also illustrates that the driver receiving structure of Sanders is located in the proximal or rear surface of the screw.



Since the recess is shown in the proximal end of the screw, the head portion does not have "a driver receiving structure formed in an outer radial side surface of the outer diameter," as recited in independent claim 1 and shown in FIGS. 1 and 4, reproduced above.

Accordingly, it is respectfully submitted that claim 1, as amended, is patentable under 35 U.S.C. §102(e) over Sanders because Sanders fails to disclose or teach each and every feature of independent claim 1. Since claims 3-9, 12, and 13 depend, directly or indirectly, from claim 1 and contain all the features of claim 1, it is respectfully submitted that claims 3-9, 12, and 13 are also patentable under 35 U.S.C. §102(e) over Sanders.

Claims 15, 16, and 19-21 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,429,641 to Gotfried (Gotfried). Applicant submits that independent claim 15,

as amended, is allowable over Gotfried because Gotfried fails to disclose or teach each and every feature of independent claim 15.

Independent claim 15 presently recites an instrument comprising, *inter alia*, arms that are “configured to provide at least a partial passage for a fastener therethrough, to selectively retain a head of an absorbable screw therebetween, and to transmit both an axial and a rotational force to the absorbable screw,” as illustrated in FIG. 9 below.

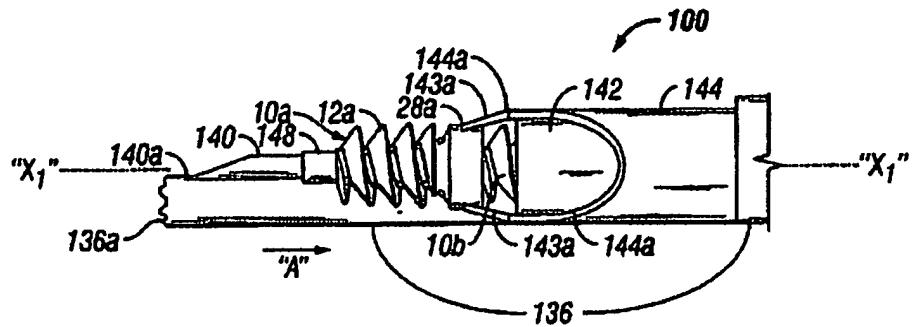


FIG. 9

Gotfried discloses a screw having a driver receiving configuration in the proximal surface of the head, which couples with a threaded section and a hexagonal section extending from the center of the driver/torque subassembly, shown in FIG. 4, reproduced below.

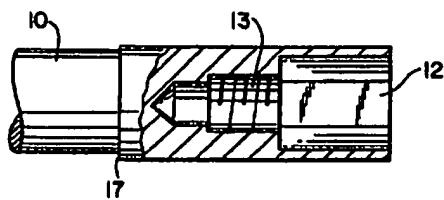


FIG. 4

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Gotfried fails to teach or disclose an instrument with arms capable of providing at least a partial passage for a fastener therethrough, selectively retaining a head of an absorbable screw therebetween, and transmitting both an axial and a rotational force to the absorbable screw, as recited in claim 15. Applicants therefore respectfully submit that, in view of the amendments made to claim 15 herein, and in view of the argument presented above, that claim 15 is allowable over Gotfried.

Since claims 16 and 19-21 depend, directly or indirectly, from claim 15, and contain all of the features of claim 15, for the reasons presented above regarding the patentability of claim 15, Applicant respectfully submits that claims 16 and 19-21 are also patentable under 35 U.S.C. §102(b) over Gotfried.

Claim 2 was rejected under 35 U.S.C §103(a) as being unpatentable over Sanders in view of U.S. Patent No. 6,096,060 to Fitts et al. (Fitts). Applicant respectfully submits that dependent claim 2 is allowable over Sanders since claim 2 depends directly from claim 1 and contains all the limitations of claim 1, and for the reasons presented above for the patentability of claim 1.

In view of the amendments made to claim 1 and the remarks presented above, Applicant respectfully submits that the rejection of claim 2 has been overcome because neither Sanders nor Fitts, considered individually or in combination, disclose or suggest the present invention, as claimed.

Claims 10 and 11 were rejected under 35 U.S.C §103(a) as being unpatentable over Sanders as applied to claim 1 above. Applicant respectfully submits that dependent claims 10

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and 11 are allowable over Sanders since claims 10 and 11 depend directly from claim 1 and contain all the limitations of claim 1, and for the reasons presented above for the patentability of claim 1.

Claim 14 was rejected under 35 U.S.C §103(a) as being unpatentable over Sanders in view of Gotfried. Applicant respectfully submits that dependent claim 14 is allowable over Sanders since claim 14 depends directly from claim 1 and contains all the limitations of claim 1, and for the reasons presented above for the patentability of claim 1.

In view of the amendments made to claim 1 and the remarks presented above, Applicant respectfully submits that the rejection of claim 14 has been overcome because neither Sanders nor Gotfried, considered individually or in combination, disclose or suggest the present invention, as claimed.

Claim 17 was rejected under 35 U.S.C §103(a) as being unpatentable over Gotfried as applied to claim 15. Applicant respectfully submits that dependent claim 17 is allowable over Gotfried since claim 17 depends directly from claim 15 and contains all the limitations of claim 15, and for the reasons presented above for the patentability of claim 15.

Claim 22 was rejected under 35 U.S.C §103(a) as being unpatentable over Gotfried in view of Sanders. Applicant respectfully submits that independent claim 22, as amended, is patentable over Gotfried in view of Sanders, taken alone or in any proper combination because Gotfried taken in any proper combination with Sanders fails to render claim 22 obvious under 35 U.S.C §103(a).

Independent claim 22, as amended, recites an instrument, inter alia, “wherein the resilient force transmitting arms allow at least a partial passage for the fastener therethrough,” and an absorbable screw with a head having, inter alia, “a driver receiving configuration formed in an outer radial side surface of the outer diameter for selective engagement with at least the pair of resilient force transmitting arms of the drive/torque subassembly.”

As stated above, Godfried discloses a screw having a driver receiving configuration in the proximal surface of the head, which couples with a threaded section and a hexagonal section extending from the center of the driver/torque subassembly. The Examiner relies on Sanders for the teaching of an absorbable screw with body and head portions. Sanders discloses an absorbable screw fastener having a driver receiving structure in the proximal surface of the screw head. Applicant submits that Gotfried can not properly be combined with Sanders to render claim 22 obvious as Sanders fails to cure the deficiencies of Gotfried.

It is respectfully submitted that neither Gotfried nor Sanders teach or suggest arms that allow at least a partial passage for the fastener therethrough, nor an absorbable screw with a head having a driver receiving configuration formed in the outer radial side surface of the outer diameter. Accordingly, in view of the argument presented above, it is respectfully submitted that claim 22, is patentable over Gotfried in view of Sanders, either taken alone or in any proper combination.

In the Office Action, claims 25-32 were rejected under 35 U.S.C §103(a) as being unpatentable over Gotfried in view of Sanders. Since claims 25-32 depend, directly or indirectly, from claim 22, and contain all of the features of claim 22, and since Sanders fails to

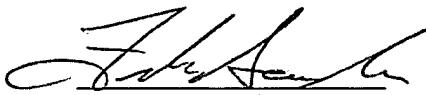
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cure the deficiencies of Gotfried as discussed above, it is respectfully submitted that each of claims 25-32 is also allowable over Gotfried in view of Sanders under 35 U.S.C. 103(a).

Should the Examiner believe that a telephone interview may facilitate resolution of any outstanding issues, the Examiner is respectfully requested to telephone Applicants' undersigned attorney at the number indicated below.

An early and favorable response on the merits is earnestly solicited.

Respectfully submitted,



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